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the interest of a sub-contractor unless the latter has complied with the provisions of the Statute (Code, sec. 2479, as amended Acts 1893-'4, p. 523), rendering the owner personally liable to the sub-contractor to the extent that such owner is indebted to the general contractor. Where, however, such personal liability has been duly created, it becomes a preferred claim, and is to be paid in full in preference to the claims of other sub-contractors who have not obtained a like advantage, but have subsequently perfected their liens under sec. 2477 of the Code.

RICHMOND ICE CO. V. CRYSTAL ICE CO.—Decided at Richmond, March 14, 1901.—*Buchanan, J.* Absent, *Whittle, J.*

1. CONTRACTS—*Goods to be manufactured—Surplus—Inability to perform—Negligence.* A defendant who has contracted to furnish certain goods to the plaintiff "out of his surplus product and so as not to interfere with existing contracts" cannot be excused on the ground of inability to perform, where the inability was the result of the defendant's failure to exercise reasonable diligence and care in putting his machinery in a condition to enable him to perform.

2. DAMAGES—*Breach of contract to deliver goods.* Under the evidence in this cause, the measure of the plaintiff's damages for the failure of the defendant to deliver goods according to contract, which the plaintiff has been compelled to purchase of another, is the difference between the contract price and the price which the plaintiff has been compelled to pay.

3. CONTRACTS—*Failure to deliver goods—Refusal to accept—Damages.* Under a contract to pay for a given quantity of ice per year, whether the whole quantity is accepted or not—the same to be delivered from day to day as the purchaser may require—the vendor is not entitled to recover for the difference between the quantity contracted for and that actually accepted, where, during a portion of the time, the vendor was unable to furnish the ice as the parties had agreed.

HORTON V. COMMONWEALTH.—Decided at Richmond, March 21, 1901.—*Keith, P.*

1. CRIMINAL LAW—*Principal in second degree—Defining offence of principal.* On an indictment of a person as principal in the second degree of murder in the first degree, it is proper for the trial court to define murder of the first degree as it is included in the indictment against the principal of the first degree, and is one of the degrees of homicide with which the defendant is charged as having aided and abetted.

2. CRIMINAL LAW—*Murder—Deadly weapons—Previous possession—Presumption.* A mortal wound given with a deadly weapon, in the previous possession of the slayer, without any or upon very slight provocation, is *prima facie* willful and premeditated killing, and throws upon the accused the necessity of proving extenuating circumstances.

3. CRIMINAL LAW—*Principals in first and second degree.* Principals in the first degree are those who are the actors, or actual perpetrators of the crime—those who are the immediate perpetrators of the act. Principals in the second degree are those who did not with their own hands commit the act, but were present, aiding and abetting it. It is not necessary in order to make a person principal in